

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

JOHN LEZELL BALENTINE,

Petitioner,

VS.

LORIE DAVIS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

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Civil Action No. 2:03-CV-039-D

ORDER


After making an independent review of the pleadings, files, and records in this case, the magistrate judge's September 29, 2017 report and recommendation on motion for relief from judgment, and petitioner's December 6, 2017 objections to the report and recommendation, the court concludes that the report and recommendation are correct, and the magistrate judge's findings and conclusions are adopted as the findings and conclusions of the court. Accordingly, petitioner's July 12, 2012 motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(6) is denied.

In accordance with Fed. R. App. P. 22(b) and 28 U.S.C. § 2253(c), and after considering the record in this case, the court denies a certificate of appealability. The court finds that petitioner has failed to make a substantial showing of the denial of a constitutional right. *See Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); 28 U.S.C. § 2253(c)(2).

If petitioner files a notice of appeal, he may proceed *in forma pauperis* on appeal.

SO ORDERED.

May 21, 2018.



SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE